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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,588	08/02/2001	Bradley S. Withers	5646/CMP/CMP/RKK	9496
32588	7590	11/17/2005	EXAMINER	
APPLIED MATERIALS, INC. 2881 SCOTT BLVD. M/S 2061 SANTA CLARA, CA 95050			SHAKERI, HADI	
			ART UNIT	PAPER NUMBER
			3723	

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/921,588

Applicant(s)

WITHERS ET AL.

Examiner

Hadi Shakeri

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 30-39 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-27 is/are allowed.
- 6) ☒ Claim(s) 1-22 and 30-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

1. In view of the BPAI Decision rendered on 07/26/05, and per MPEP § 1214.04, PROSECUTION IS HEREBY REOPENED. The new rejection is set forth below.

The Group Director has approved of reopening prosecution by signing below:

Specification

2. The disclosure is objected to because of the following informalities: the application number for the incorporated US Application 09/144,456, per paragraph [0017], is in error. US Application 09/144,456 is not filed by Birang et al. and is titled "Hair Dryer".

Appropriate correction is required.

Claim Rejections - 35 USC § 102

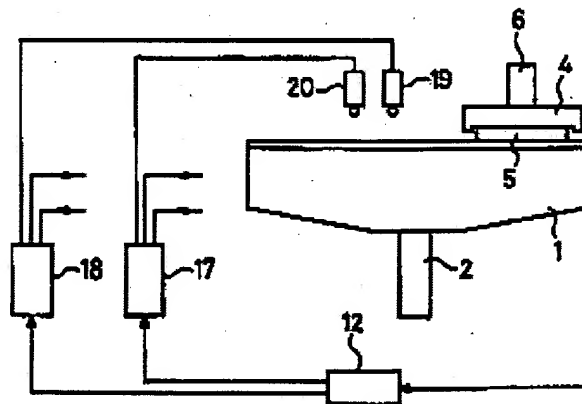
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-9, 12-22, 30-33 and 25-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimura et al. (5,679,063).

Kimura et al. discloses all the limitations of claims 1, 16, 19, 30 and 31, i.e., a system for delivering a polishing fluid to a CMP surface comprising a rotating polishing material (3) having an upwardly facing polishing surface for polishing a substrate thereon; an arm (13) having a delivery portion disposed at least partially over the



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polishing surface; first nozzle (19) disposed on the delivery portion for delivering the polishing fluid; and at least a second nozzle (06:05-08) disposed on the delivery portion for delivering the polishing fluid. It is noted that the "adapted to", narrative and/or functional language that the nozzles are adapted to deliver the fluid at different rates and that the polishing fluid delivered are of equal concentration fails to further limit the apparatus as recited, since the apparatus as disclosed by Kimura et al. is capable of performing the functions. Kimura et al. discloses (05:53-55) that the solution supply nozzles are equipped with needle valves to enable adjustment of the supply volume, thus meeting the "adapted to" and the narrative and/or functional language, since it is capable of delivering the fluid of a same concentration at different rates, e.g., greater volume of polishing fluid on a first region than the polishing fluid on a second region, and as such inherently meets the limitations. Applicant attention is directed to MPEP 2112, particularly to MPEP 2112.01

**PRODUCT AND APPARATUS CLAIMS — WHEN THE STRUCTURE
RECITED IN THE REFERENCE IS SUBSTANTIALLY IDENTICAL TO THAT
OF THE CLAIMS, CLAIMED PROPERTIES OR FUNCTIONS ARE
PRESUMED TO BE INHERENT**

Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established.

In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). Therefore, the prima facie case can be rebutted by evidence showing that the prior art products do not necessarily possess the characteristics of the claimed product. In re Best, 562 F.2d at 1255, 195 USPQ at 433. See also Titanium Metals Corp. v. Banner, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985) (Claims were directed to a titanium alloy containing 0.2-0.4% Mo

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and 0.6-0.9% Ni having corrosion resistance. A Russian article disclosed a titanium alloy containing 0.25% Mo and 0.75% Ni but was silent as to corrosion resistance. The Federal Circuit held that the claim was anticipated because the percentages of Mo and Ni were squarely within the claimed ranges. The court went on to say that it was immaterial what properties the alloys had or who discovered the properties because the composition is the same and thus must necessarily exhibit the properties.).

See also *In re Ludtke*, 441 F.2d 660, 169 USPQ 563 (CCPA 1971) (Claim 1 was directed to a parachute canopy having concentric circumferential panels radially separated from each other by radially extending tie lines. The panels were separated "such that the critical velocity of each successively larger panel will be less than the critical velocity of the previous panel, whereby said parachute will sequentially open and thus gradually decelerate." The court found that the claim was anticipated by Menget. Menget taught a parachute having three circumferential panels separated by tie lines. The court upheld the rejection finding that applicant had failed to show that Menget did not possess the functional characteristics of the claims.); *Northam Warren Corp. v. D. F. Newfield Co.*, 7 F. Supp. 773, 22 USPQ 313 (E.D.N.Y. 1934) (A patent to a pencil for cleaning fingernails was held invalid because a pencil of the same structure for writing was found in the prior art.).

Regarding claims 2-9, 15, 17, 18, 20-22, 32, 33, 35, 36 and 39, Kimura et al. meets the limitations, i.e., needle valves; polishing delivery line coupled to both first and second nozzle as shown in Fig. 4; fluid sources (17, 18, 04-18:24) coupled to the nozzles; nozzles adapted to flow the fluid at a controlled rate and each nozzle independently controlled (valves); platen (1); metrology device (04:50-54).

Regarding claims 12-14, 37 and 38, Kimura et al. is considered to inherently meet the limitations, i.e., the apparatus through the nozzles is capable of flowing the fluid at the specific rates.

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Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

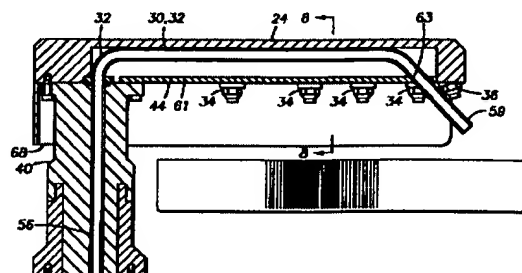
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura et al. in view of either Applicant's Admitted Prior Art (AAPA) or Birang et al. (US 2002/0016136).

Kimura et al. meets all the limitations of claims 10 and 11, except for disclosing the type of the polishing pad. As indicated by the Applicant, e.g., on pages 4 and 5, it is known in the art to use either conventional pad (e.g., polyurethane), fixed abrasive pad or webs as disclosed in US 5,692,950, 5,453,312 (page 5). Birang et al. also teaches the use of fixed abrasive webs. It is known in the art, as shown by AAPA and/or Birang et al., to use fixed abrasive webs in polishing a wafer. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Kimura et al. by using a fixed abrasive web in view of AAPA and/or Birang et al., in applications wherein a little or no abrasive in the polishing fluid is desired and/or required.

7. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura et al. in view of Kennedy et al, US Patent No. 6,139,406.

Kimura et al. meets all the limitations of claim 34, except for disclosing for the delivery lines to be disposed within the arm. Kennedy et al. teaches a



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combined slurry and rinse arm in which the delivery lines (30) (32) are disposed within the arm. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Kimura, by providing the polishing lines dispensed within the arm as taught by Kennedy et al., as an economical and efficient means of delivering the polishing fluid and/or for protecting the lines, e.g., from corrosion...

Allowable Subject Matter

8. Claims 23-27 are allowed.

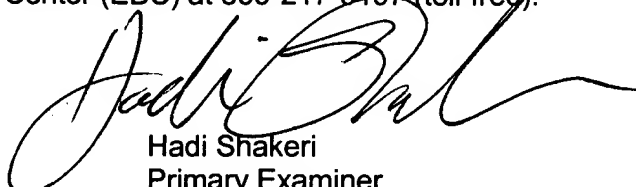
Conclusion

9. Prior art made of record and not relied upon are considered pertinent to applicant's disclosure. Togawa et al. and Kunugi are cited to show related inventions.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hadi Shakeri whose telephone number is 571-272-4495. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail, III can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Hadi Shakeri
Primary Examiner
Art Unit 3723

hs
November 9, 2005


Dexter TC 3700